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### A Miracle, a Universe: Settling Accounts with Torturers

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A MIRACLE, A UNIVERSE: SETTLING ACCOUNTS WITH TORTURERS. By Lawrence Weschler. New York, Pantheon, 1990. Pp. ix, 246. \$22.95.

Reviewed by Juan E. Méndez\*

As the world experiences a dramatic shift towards democracy, an interesting dilemma comes to the forefront of the agenda in many societies: Should the human rights violations of the recent past go unpunished for the sake of "national reconciliation," or must the new elected governments bring those crimes to justice? Naturally, the problem is more urgent when the crimes have been particularly massive and heinous, and all the more so if they are relatively recent. Transitions to democracy are, in significant part, a healing process, since dictatorship has left not only scars but open wounds; the treatment afforded to its victims becomes a test of the type of democracy that is being built.<sup>1</sup>

If political leaders are unwilling to lead, the organizations of civil society nonetheless take full advantage of the newly restored freedoms, and they fill the void created by the politicians' complacency and the military's recalcitrance. The struggle against impunity now gives shape and focus to a large and diverse non-governmental movement to promote human rights. Indeed, that movement's insistence on accountability has

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1. The problem assumes different forms in different places, but it is worth pointing out that it is a problem only in those countries where formerly ruling elites have given way to elected authorities while retaining an important measure of power and influence. Former dictators may be in disfavor with the general public, but their residual control of certain levers allows them to limit and condition the exercise of sovereign power by the representatives of the people. Overcoming those obstacles requires both courage and wisdom on the part of elected leaders; in many cases, however, a direct result of years of dictatorship is the re-emergence of a political leadership not blessed with a vision for a superior form of democracy. The immediate need to avoid confrontation with military elites that threaten to destabilize democracy then takes precedence over the good intention of restoring the rule of law and redressing past abuses. *See generally* Symposium, *Transitions to Democracy and the Rule of Law*, 5 AM. U.J. INT'L. L. & POL'Y. 965 (1990).

been the reason for its phenomenal growth in Latin America during the 1980's. *A Miracle, A Universe: Settling Accounts with Torturers* narrates the efforts of multiple non-governmental organizations in Brazil and in Uruguay to seek Truth and Justice in the face of military opposition and lack of courage on the part of civilian leaders.<sup>2</sup>

The quest for Truth and Justice dominates the human rights agenda in Latin America today, but it is by no means circumscribed in this hemisphere. Only last December, the Greek government decided against pardoning the leaders of the "dictatorship of the colonels" who have been serving long prison sentences since the advent of democracy in the mid-1970's.<sup>3</sup> Prosecution and punishment of past abuses was briefly an issue in the Philippines, after the fall of Ferdinand Marcos, until it was overcome by more urgent human rights problems.<sup>4</sup> In the Soviet Union of *perestroika* and "new thinking," an organization of civil society that calls itself *Memorial* has taken up the task of documenting the crimes of the Stalinist era.<sup>5</sup> In South Africa, accountability for past abuses is

2. L. WESCHLER, *A MIRACLE, A UNIVERSE: SETTLING ACCOUNTS WITH TORTURERS* (1990) [hereinafter *A MIRACLE, A UNIVERSE*]. For other non-governmental efforts on accountability, and the contributions of science, see C. JOYCE & E. STOVER, *WITNESS FROM THE GRAVE: THE STORIES BONES TELL* (1991).

3. *Greek Leftists to Protest Against Release of Former Dictators*, The Reuter Library Report, Dec. 29, 1990 (B.C. Cycle) ("Greek socialists planned nationwide protests to prevent the release of 13 army officers jailed for human rights crimes during a brutal seven-year dictatorship which followed the 'colonels' coup' of 1967.").

4. Fineman, *In Manila the Honeymoon isn't Over, but Bridal Attendants Stir Concern* . . . , L.A. Times, May 18, 1986, Part 5 (Opinion), at 2, col. 3.

Members of the powerful armed forces, who were key to Aquino's rise to power, are holding back in the battle to put down a burgeoning communist insurgency, out of fear that Aquino's Commission on Human Rights will punish them for violations under Marcos' rule. . . . The campaign by Pimentel, her minister of local governments, to remove most of the mayors and governors who formed Marcos' political machine has sparked violence in several towns and left many key regions unstable.

*Id.* at 6, col. 2.

5. Church, *Haunted by History's Horrors*, TIME, Apr. 10, 1989, at 71.

A rapidly growing group called Memorial aims to build a monument to Stalin's victims and establish an archive and research center to document his crimes. . . . But its most

gradually becoming a salient issue in the negotiations that are expected to begin on how to dismantle the *apartheid* regime.<sup>6</sup>

Still, Latin America continues to offer the richest experience on this matter.<sup>7</sup> The first ever free and fair election in Haiti, held on December 16, 1990, has brought this matter to urgent attention; Catholic priest Jean-Bertrand Aristide, who won the presidency by a landslide, insisted during his campaign that the crimes of the Duvalierist and army-led regimes will be investigated and punished.<sup>8</sup> The Argentine

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important role is to provide an outlet for the grief and pain that victims of Stalin and their relatives have long had to keep to themselves:

*Id.* at 72.

6. Ottawa, *Hit-Squad Report Sparks Outcry in South Africa*, The Wash. Post, Nov. 17, 1990, § 1 (Final Edition), at A14, col. 5. The exoneration of South Africa's police and army leadership by a special commission investigating the activities of the alleged "death squads" said to be responsible for the murder of more than 100 anti-apartheid activists had ignited the first serious outcry over the state of justice in Frederick W. de Klerk's emerging "new South Africa." See also Fried, *South African Civil Rights Groups Want Defense Minister to Quit*, UPI Wire Service, Nov. 14, 1990 (B.C. Cycle) ("The real problem here is a profound disregard for the democratic principle of accountability . . .").

7. Since national instability and human rights abuses were so pervasive throughout the continent, much of the abuse took place internationally.

Some of the worst instances of Uruguayan torture took place not in Montevideo, and not even in Uruguay, but in neighboring Argentina. An ironic aspect of the doctrine of national security's descent upon the entire Southern Cone was the order in which it engulfed the various countries: Brazil, beginning in 1964; Uruguay, in June, 1973; Chile, in September, 1973; and Argentina not until 1976. Political refugees streamed from one country to the next. . . . [I]n order to pursue international communism across each other's borders, Argentina's military invited special commando units from the Uruguayan armed forces to Buenos Aires, to search for their nationals hiding there.

A MIRACLE, A UNIVERSE, *supra* note 2, at 129.

8. *Haiti in Chaos: As U.S. Sows, So Shall She Reap*, Defense and Foreign Affairs Weekly, Jan. 14-20, 1991, at 1 ("Aristide has based his claims for legitimacy and US support on the fact that he would root out 'Duvalierism' and the former members of the *Tontons Macoute*, the paramilitary secret police created by Francois Duvalier, and used by both himself and his son and successor, Jean-Claude Duvalier, to enforce their 29-

experience of seven years has just come to a close, with the release of the principal leaders of the so-called "Dirty War" through a pardon issued by President Carlos Saúl Menem.<sup>9</sup> This sad turn of events should not diminish the significance of what Argentina accomplished; the almighty Junta commanders who ruled the country and planned, ordered and supervised more than ten thousand disappearances, had to face the law of democratic Argentina. They were proven guilty by a court of law of multiple, unspeakable crimes, and each spent five, six or seven years in custody. More importantly, Menem's highly unpopular pardon demonstrated that the once-powerful generals are still held in utmost contempt by the majority of Argentines.

The cycle may have come to an end in Argentina, just as it erupts in Haiti. In the meantime, the Chilean experiment is in full development. President Patricio Aylwin appointed a Commission of Truth and Reconciliation that issued its report in March of 1991.<sup>10</sup> It has provided an accurate, detailed, rigorous description of the patterns of violations of the Pinochet era.<sup>11</sup> Decisions will now have to be made about how to handle judicial complaints filed by the victims.<sup>12</sup> As in Argentina, the issue has legal, ethical and political dimensions. It will define the relations between civilian and military for years to come.

Truth and Justice are separate components of a single process and, in fact, they may well take place in different stages and under the direction of different governmental and civilian bodies. The Chilean

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year rule in Haiti). *See also* French, *Haiti's Victors Working to Soothe Fears*, N.Y. Times, Jan. 11, 1991, at A3, col. 4 (President Aristide calls this rooting out of Duvalierism "vigilance without vengeance.").

9. President Menem pardoned 280 officers and civilians accused of human rights atrocities and crimes against the state during the "Dirty War." Robbins & Staubus, *Should Anyone Cry for Argentina?*, 107 U.S. NEWS AND WORLD REP., (Oct. 30, 1989) at 51.

10. Nash, *Pinochet Assails Chilean Rights Report*, N.Y. Times, March 28, 1991, at A3, col. 4. *See also* Crawford, *Chile Sets Up Limited Human Rights Probe*, Fin. Times, Apr. 26, 1990, § I (American News), at 4, col. 2 ("The National Commission of Truth and Reconciliation, consisting of nine prominent lawyers and academics, will have six to nine months to identify the victims of torture, disappearances and political executions, and to recommend compensation for victims or their families.").

11. The Commission was not, however, allowed to name those who ordered or took part in the repression. Crawford, *Chile Adapts Uneasily to Life without the General*, Financial Times, May 2, 1991, § I (American News), at 6, col. 6.

12. Wicker, *In the Nation; 'Middle Way' in Chile*, N.Y. Times, Aug. 16, 1990, at A25, col. 1 ("Chilean citizens will be free to press charges, though mostly in the same courts that sat during the Pinochet regime.").

Commission on Truth and Reconciliation, like its Argentine counterpart, the Comisión Nacional sobre Desaparición de Personas (CONADEP, chaired by writer Ernesto Sabato), had no powers to initiate prosecution. Whether or not administrative bodies are formed to investigate, trials against former torturers or murderers can also result in a great measure of discovery of the facts, including the structure of repression, the chain of command and responsibility for massive atrocities. The case against the Junta members, which was aired for five months in open court in Buenos Aires, played such a role. On the other hand, cases filed independently by family members and circumscribed to certain discrete offenses, would not generally provide an adequate substitute for the acknowledgement of the crimes by society.

The question then becomes, are both Truth and Justice necessary? Are they equally important? Punishment carried out without all guarantees of due process, including open proceedings and full opportunities for defense, would not even qualify as Justice. One could envision, however, a situation in which a certain amount of Justice and redress is achieved without a complete "coming clean." For example, certain perpetrators might be convicted and sentenced through a plea bargain agreement by which many important aspects of their crime would be left in the dark. Such a result would not satisfy the minimal requirements of accountability, because the deliberate attempt to seal the Truth from the public would negate the healing of open wounds that is the main object of the process.

There begins to stir, for this reason, a certain controversy about which is more important.<sup>13</sup> Latin American human rights organizations insist that Truth-telling is not enough, and that effective prosecution and punishment is essential to the restoration of Justice.<sup>14</sup> In the Soviet Union, on the other hand, *Memorial* insists on an exhaustive investigation of Stalinist crimes, but also rejects the idea of prosecutions.<sup>15</sup> In South

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13. See Letters entitled "Truth, Justice and Impunity," and "Neier Replies," exchanged between Oscar Bolioli, Director Latin American/Caribbean Office of the National Council of Churches, Esmeralda Brown, U.N. Representative Service for Peace and Justice, Latin America (Serpaj), Sister Bernadette Desmond, U.N. Representative Federation of the Relatives of the Disappeared (Fedefam), and Aryeh Neier, Human Rights Watch, reprinted in THE NATION, Dec. 24, 1990, at 790.

14. A MIRACLE, A UNIVERSE, *supra* note 2, at 48 ("There's a common Brazilian expression — 'For friends, everything. For enemies, justice.'").

15. At the urging of human rights activist Andrei Sakharov, *Memorial* decided against demanding criminal proceedings against people accused of crimes during the Stalin era. Some members, however, have begun calling for a public trial of Stalin

Africa, voices in the human rights movement are being raised to express concern that the African National Congress is not insisting on its demand for Truth and Justice, out of fear that it might be an obstacle for early negotiations for a transition to democracy.

The dilemmas of pursuing Truth and Justice while facing serious challenges to democratic stability have been the subject of extensive discussion among human rights activists. There is no serious dispute about the desirability of a policy of investigations and prosecutions, provided certain "conditions of legitimacy" are present. Those conditions include a wide and open debate, and a democratic decision as to the way the policy should be implemented. There is more debate, however, as to the extent to which amnesty laws and other political limitations on prosecutorial activity are acceptable to the human rights movement.<sup>16</sup> Though the issue is far from settled, even among international law specialists, there appears to be a growing body of legal opinion to the effect that states have an affirmative obligation to punish certain massive and systematic human rights violations. Some authors consider this obligation a corollary to the state's obligation to respect and to guarantee the enjoyment of certain rights to all individuals; since there are certain rights that can't be derogated, an amnesty would constitute an impermissible *ex post facto* derogation of those rights. An argument is also made that certain systematic violations — such as torture,<sup>17</sup>

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which may raise difficult questions for the Communist government. Cornwell, *Anti-Stalinist Movement Calls for "Trial" of Stalin*, Reuters Library Report, Jan. 29, 1989 (A.M. Cycle); see also Church, *Haunted by History's Horrors*, TIME, Apr. 10, 1989, at 72.

16. See Jose Zalaquett's paper to the Wye Woods conference sponsored by the Aspen Institute (this paper appears in *State Crimes: Punishment or Pardon?*, a 1989 monograph distributed by the Aspen Institute, New York). For reference to this paper, see A MIRACLE, A UNIVERSE, *supra* note 2, at 247-49.

17. The United Nations General Assembly has defined torture as:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons.

Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on December 9, 1975. G.A. Res. 3452, 30 U.N. GAOR Supp. (No.34) at 531, U.N. Doc. A/10034 (1975).

extrajudicial executions and disappearances — arise to the level of "crimes against humanity."<sup>18</sup> With respect to crimes against humanity, as with most serious war crimes, the thrust of the international obligations created in the last forty-five years is to ensure not only their prohibition, but also effective punishment for their perpetrators.<sup>19</sup>

There is no dispute within the human rights movement, in any event, as to the need for the Truth phase. This is understood as an obligation on the part of democratic government, not only to allow inquiries (by families, by the press or by human rights monitors), but more affirmatively to direct state resources towards the discovery of what actually happened. It is not merely a matter of "knowledge" but of "acknowledgement," as it is aptly put by Professor Thomas Nagel, of New York University.<sup>20</sup> Knowledge that is officially sanctioned, and thereby "made part of the public cognitive scene," in Nagel's words, acquires a mysterious quality that is not there when it is merely "truth,"

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See also E. PETERS, TORTURE 142-43 (1985).

18. A MIRACLE, A UNIVERSE, *supra* note 2, at 45. Weschler points out that torture itself is a nebulous concept. In an inquiry with a Brazilian lawyer concerning the percentage of his clients tortured, Weschler quotes the lawyer as saying:

"As far as physical torture goes - beatings, drowning, shocks, that sort of thing - not everyone went through that," he replied. "But there were cases in which a person would be kidnapped from his home in the middle of the night, taken to an unknown place, kept there for three months, and forced to listen to people's screams every night, and then, even though he himself had suffered no violence, he'd sign a confession. And there were cases in which they'd arrest the man's wife in front of him and drag her away, without touching him, and he'd sign a confession. It depends on how you define torture."

*Id.*; see also E. PETERS, *supra* note 17, at 153 ("Indeed, in the moral and sentimental universe, nothing may be torture, and, with a slight shift of perspective, everything may be torture . . . . Semantic entropy does not serve very well to keep distinctions sharp.").

19. Orentlicher, *Settling Accounts: The Obligation Under International Law to Prosecute a Prior Regime's Human Rights Violations*, 100 YALE L.J. \_\_\_\_ (1991) (forthcoming).

20. Professor Nagel's intervention took place in the context of the seminar held by the Aspen Institute in Wye Woods, Maryland, in November 1988. See A MIRACLE, A UNIVERSE, *supra* note 2, at 4.



that is consistent with what actually happened.<sup>21</sup> Official acknowledgement at least begins to heal the wounds. It may not be enough by itself, but it goes a long way towards Justice and reconciliation.<sup>22</sup>

For the same reason, efforts to thwart prosecutions, like the *Punto Final* and *Obediencia Debida* laws in Argentina, and the *Ley de Caducidad* in Uruguay, are offensive not only because they let notorious criminals off the hook, but because they prevent the courts from digging into the facts, and they deprive the victims and their families the right to know what happened through the careful and tested proceedings devised to establish a judicial Truth in a court of law. Even the Menem pardons would be less objectionable if they had been preceded by an act of contrition from the generals, including an acknowledgement of responsibility for egregious crimes. Instead, the pardons are so patently an effort to forgive and forget that they necessarily clash with the public conscience about Truth and Justice.

Lawrence Weschler has chosen to write about the experience precisely in those countries where the official efforts to prevent Truth-telling have been the most successful, at least as far as officially-sanctioned acknowledgement goes. This is an important choice, because this book demonstrates that the impulse to keep the past in darkness eventually fails. There is, of course, nothing to prevent the military establishment and weak political leadership from succeeding in keeping

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21. *Id.*

22. Weschler summarizes the moral dimension of these concerns by stating that:

[O]ne has to return to the scream welling out of the torture chamber. An old man, a teenage boy, a young woman five months pregnant, is screaming in agony. And what is the torturer saying? . . . "Go ahead, scream, scream all you like, scream your lungs out - nobody can hear you, nobody would dare to hear you, nobody cares about you, no one will ever know." That is the primordial moment which has desperately to be addressed - and as desperately by the torture society as the torture victim: Who was there? Who was screaming? Who were those people standing by the screamer's side? Who, even now, will dare to hear? Who will care to know? Who will be held accountable? And who will hold them to account?

*Id.* at 242.

the record under wraps. In Guatemala, for example, military and civilian governments have prevented any accountability for past abuses from taking place, and even now the scope and extent of human rights violations is not completely known.<sup>23</sup> But this book narrates two extraordinary instances of civil courage, commitment and inventiveness that have effectively broken through the conspiracy of silence in Brazil and in Uruguay. The crimes of those two dictatorships are still unpunished, but their victories are certainly less than complete after the efforts of the Brazilian and Uruguayan human rights communities.

The first part of *A Miracle, A Universe* describes the extraordinary process of clandestine research that led to the publication of *Brasil: Nunca Mais*,<sup>24</sup> an authoritative and best-selling account of torture during the military dictatorship, gleaned from the military courts' own records.<sup>25</sup> The long and dangerous effort was sponsored by one of Latin America's leading human rights activists, Cardinal Paulo Evaristo Arns, Archbishop of Sao Paulo.<sup>26</sup> In Brazil, the transition to democracy was slow, protracted and deliberate. The military dictatorship began a process

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23. Broder & Lambek, *Military Aid to Guatemala: The Failure of U.S. Human Rights Legislation*, 13 YALE J. INT'L L. 111 (1988). "In spite of the election and inauguration of a civilian president, grievous human rights violations, attributable to the army, continue to terrorize the Guatemalan people." *Id.* at 113; see also Albert, *The Undermining of the Legal Standards for Human Rights Violations in United States Foreign Policy: The Case of "Improvement" in Guatemala*, 14 COLUM. HUM. RTS. L. REV. 231 (1982-83).

24. Published in the United States as TORTURE IN BRAZIL (J. Dassin ed., J. Wright trans. 1986) [hereinafter TORTURE IN BRAZIL].

25. The records included military court proceedings of 707 complete trials held between 1964-1979 and partial records of many other trials. *Brasil: Nunca Mais* is a summary of a project that included: The clandestine photocopying of one million pages of records undertaken by lawyers associated with the Catholic Church along with copying of over 10,000 publications of Brazilian political groups; a 7,000 page report written by thirty-five researchers that took over five years to compile; which report included 2,700 pages of testimony given by 1,843 political prisoners documenting 283 types of torture, 242 torture centers, and 444 individual torturers. TORTURE IN BRAZIL, *supra* note 24, at ix-x (introduction to the English-Language Edition by Joan Dassin). Such extensive incriminating records existed because "[t]he Brazilian generals, you see, were technocrats. They were intent on doing things by the book, on following the forms, even if the results were often cruel and perverse." A MIRACLE, A UNIVERSE, *supra* note 2, at 15.

26. Cardinal Arns took grave personal risks. He did not consult with his fellow bishops, he did not have permission from the Vatican, and he told team members that if anything went wrong he would assume full personal responsibility. A MIRACLE, A UNIVERSE, *supra* note 2, at 21.

of democratic opening (*abertura*) in 1979,<sup>27</sup> but only in 1990 were Brazilians allowed to choose a President in direct election. The military establishment was able to maintain a careful control over this process, including passage of an amnesty law in 1979 that effectively prevents any prosecution for the severe crimes detailed in *Brasil: Nunca Mais*. Even individual civil lawsuits for damages, initiated by some victims, among other things to produce some judicial discovery of the Truth, have been thwarted by application of this shameful self-amnesty law.

Nonetheless, *Brasil: Nunca Mais*'s remarkable publishing success has meant that its contents are firmly etched in the public consciousness.<sup>28</sup> Years later, mainstream publications refer to it again and again. In late 1990, for example, wide coverage was given to the fact that a torturer identified in the book, now a lawyer, had joined the team that defended a father and son accused (and later convicted) of the murder of labor leader and environmentalist Francisco "Chico" Mendes. There may not be an officially-sanctioned acknowledgement in Brazil about the violations of the military between 1964 and 1979, but *Brasil: Nunca Mais* has more than filled that gap.

There is no torture of political dissidents in Brazil today and, thanks in large measure to *Brasil: Nunca Mais*, political persecution is unlikely to reappear anytime soon. The country's rich and energetic human rights movement is dedicated to other forms of human rights violations: torture and execution by police of common crime offenders and suspects, abominable prison conditions, and pervasive impunity for

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27. *Id.* at 14.

In March, 1979, the wary, gradual, fitful process of military liberalization, which had been under way for several years during the Presidency of General Ernesto Geisel, entered a new phase with the inauguration of Geisel's chosen successor, General João Baptista Figueiredo. (It was at this point that the *distensão* began turning into the *abertura*.)

*Id.*

28. Twenty-six weeks as "Number 1" in the Brazilian best-seller list, the original Portuguese version has gone through twenty printings. It remained on the best-seller list for two years. With more than 200,000 copies in circulation, it is Brazil's all-time, non-fiction, best-seller. A MIRACLE, A UNIVERSE, *supra* note 2, at 72.

crimes committed in the countryside in the context of the struggle for land.<sup>29</sup> The economic crisis and increasing social disparities make that struggle difficult. A large and powerful sector of the population, frightened by the rising crime rate in the cities, provides tacit support for tactics and methods against common crime suspects that they would reject if applied to the middle class, educated political dissidents.<sup>30</sup> A pervasive legacy of the military dictatorship is an authoritarian streak among many Brazilians, that allows them to condone undemocratic means of tackling social problems. Armed with the credibility obtained through the *Brasil: Nunca Mais* project, however, many different human rights groups — with the active support of Catholic Church leaders like Cardinal Arnês — are waging a difficult but active battle against impunity.

The second part of Weschler's book<sup>31</sup> describes the efforts of the Uruguayan human rights community to prevent impunity for the many crimes of the military that ruled the country between 1973 and 1985.<sup>32</sup> In Uruguay the military was also able to control the transition process, thanks in part to the eagerness of political leaders to have elections. At a secret meeting in the Naval Club in Montevideo,<sup>33</sup> on August 3, 1984, military chiefs and politicians agreed that, in exchange for elections, the politicians would see to it that no officer would have to face trial for their

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29. See *Police Abuse in Brasil: Summary Executions and Torture in Sao Paulo and Rio de Janeiro*, An Americas Watch Report, Dec. 1987; *Prison Conditions in Brasil*, An Americas Watch Report, Apr. 1989; *Brasil: Notorious Jail Operating Again in Sao Paulo*, News from Americas Watch, Oct. 1989; *On Trial in Brasil: Rural Violence and the Murder of Chico Mendes*, News from Americas Watch, Dec. 9, 1990; and *Forced Labor in Brasil*, News from Americas Watch, Dec. 30, 1990; see also *Rural Violence in Brasil*, An Americas Watch Report, Feb. 1991. The preceding reports are available from Human Rights Watch 485 Fifth Avenue, New York, N.Y. 10017-6104, (212) 972-8400, or 1522 K Street, NW, Suite 910, Washington D.C. 20005, (202) 371-6592.

30. A MIRACLE, A UNIVERSE, *supra* note 2, at 64, "[B]ut the Brazilian Miracle, as it came to be called, benefitted only the richest 10 percent of the population. Everyone else got much poorer. . . . In 1980, the bottom 25 percent of the population registered no income at all, and the next 25 percent earned below the minimum wage." *Id.* at 64-65.

31. *Id.* at 83.

32. Prior to this, Uruguay had been the freest nation in Latin America. During this period, however, Uruguay "transmogrified" itself into the country with the highest per capita rate of political incarceration anywhere on earth. A MIRACLE, A UNIVERSE, *supra* note 2, at 85. For an account of the political, economic, and social factors that led to the downfall of Uruguay, the "Switzerland of South America," see generally M. WEINSTEIN, *URUGUAY: THE POLITICS OF FAILURE* 85 (1975).

33. A MIRACLE, A UNIVERSE, *supra* note 2, at 158.

human rights crimes.<sup>34</sup> The impetus for liberalization was such that one of the first measures of the newly democratic parliament was to pass a generous amnesty that released all of the political prisoners still held at the end of the dictatorship.<sup>35</sup> The government of Raul Sanguinetti wanted immediately to move in the direction of a similar amnesty for the military,<sup>36</sup> but the opposition in Congress made it impossible.<sup>37</sup>

In that stalemate, victims and their families filed criminal charges and civil suits for damages in specific cases. Though the cases moved slowly, pretty soon judges started calling in some military officers for questioning. The military high command stated in no uncertain terms that those judicial orders would be disobeyed, and that efforts to enforce them would be resisted.<sup>38</sup> An agreement between the two major parties settled the "institutional conflict." The opposition Blanco party was persuaded to vote with the government on a law, passed in December 1986, that effectively put a stop to all criminal prosecutions and investigations.<sup>39</sup> Like in Argentina, the political establishment refused to call their law an amnesty: By this law, the Congress declared that, by force of circumstances, the power of the state to punish (*pretensión punitiva del estado*) had effectively "lapsed" (*caducidad*). That such a quaint formulation of a political decision could have judicial effect is testimony to the twists and turns that democratic leaders are willing to inflict on the rule of law, if they perceive the system as threatened.

Most politicians were willing to live with this open blackmail against democracy, but the Uruguayan human rights groups were not. They made use of a clause in the Uruguayan Constitution that allows for

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34. Although well documented, this agreement is denied by many participants at the meeting. For example, Raúl Sanguinetti maintained that:

The question of amnesty for the military was not discussed in the negotiations, just as no one said that the jailed prisoners would be turned loose the day after an elected government took office. It was an intelligent omission. We were seeking ways to remove obstacles, not to create them. You can't make a peace treaty discussing the origins of the war.

*Id.* at 166-67.

35. *Id.* at 167.

36. *Id.*

37. *Id.* at 168.

38. *Id.*

39. *Id.* at 170.

laws to be tested by referendum, and to force such a referendum by public demand. The system is copied from several European countries, where a referendum is triggered by a petition is signed by 5 or 10% of the electorate.<sup>40</sup> In Uruguay, 25% of the registered voters must sign the petition in order to force the government to organize the referendum. As if that wasn't hard enough, the government of Raúl Sanguinetti embarked on an aggressive campaign to place obstacles in the drive. Each signature was scrutinized, to the extent of placing the burden on the petitioners to prove the authenticity of a high number of contested signatures. Thousands of petitioners were forced to come forward to ratify their signature.<sup>41</sup> Even so, the campaign launched by the human rights organizations succeeded in forcing the issue to a referendum.<sup>42</sup>

If the government had placed obstacles in the petition campaign, it pulled no stops in campaigning in favor of retention of the *ley de caducidad*.<sup>43</sup> Sanguinetti himself repeatedly warned of the serious risk to democratic stability that would result from repeal of the law. On April 16, 1989, a majority of the Uruguayans voted to keep the law in effect.<sup>44</sup> The vote to repeal won in the city of Montevideo, and overall obtained more than 45% of the vote. Ultimately, however, faced with the stark decision to choose between Justice and Democracy, the electorate opted for the safe alternative.<sup>45</sup> It may well be that this judicious behavior has prevented a *coup d'état*; it is undisputable, however, that the military got

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40. The Uruguayan Constitution is based on the Swiss Constitution. A MIRACLE, A UNIVERSE, *supra* note 2, at 175-76.

41. Among other ridiculous disqualifications, "the thumbprint signatures of all the remaining illiterates were set aside, on the suspicion that - who knew? - they might have attempted to forge their thumbs." *Id.* at 219.

42. *Challenging Impunity: The Ley de Caducidad and the Referendum Campaign in Uruguay*, An Americas' Watch Report, Mar. 1989. See *supra* note 29 for information regarding Americas' Watch. Lawrence Weschler frequently refers to Americas Watch for its monitoring of human rights. A MIRACLE, A UNIVERSE, *supra* note 2, at 220, 227.

43. A MIRACLE, A UNIVERSE, *supra* note 2, at 222. The government denounced the Pro Referendum Commission's position as a "campaign of hate." Similarly, the military declared that anyone who signed the petition was "mentally ill." *Id.*

44. *Id.* at 233.

45. Aryeh Neier, the Executive Director of Human Rights Watch in New York, takes exception to this idea that the electorate can provide clemency for human rights abusers in the name of democracy. "Neier demurred from the notion that 'the will of the people' has anything to do with the proper application of justice. 'If [someone] hits me,' Neier proposed, 'I have a right to forgive him, but does everyone else in this room have the right to forgive him in my stead?'" *Id.* at 244.

away with a shameful blackmail and with placing limits on the exercise of power by the democratic institutions of the state.

Lawsuits for damages filed by former prisoners have continued in Uruguay, unaffected by the *Ley de Caducidad*.<sup>46</sup> The government intervenes in those cases through the prosecutors, who have availed themselves of all possible legal arguments against compensation. In a recent case, however, the government finally agreed to settle five of these claims with former prisoners. Still more await judicial decisions. In addition, several victims of repression have petitioned the Inter-American Commission of Human Rights of the Organization of American States for a declaratory judgment to the effect that the *Ley de Caducidad* violates Uruguay's obligations under the American Convention on Human Rights. The petitioners also request that the matter be submitted to the Inter-

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46. One of the more bizarre aspects of the Uruguayan human rights abuses is that, because the nation is so small and had the highest per capita rate of political incarceration anywhere in the world, torture victims routinely encounter their actual torturers on the streets of the cities and towns. *Id.* at 166. An even more unreal aspect of this is that victims appear to be ready and able to confront their torturers and to forgive them! *Id.* at 198-99. A possible explanation of this behavior is explained in E. PETERS, *supra* note 17, in the context of the 1975 torture trials in Greece. In questioning how once distinguished Greek officers could have sunk to such a level of moral degradation, Peters wrote:

In other discussions of the psychology of the Greek torturers, even many of their pronounced sexual perversities struck observers as the *consequences*, not the causes, of the practice of torture:

It is important to see that these individual perversions are not the cause of a system of torture. Rather, once a system of torture has been created in order to support the political needs of those in power, the rulers' agents will exhibit patterns of behaviour that they would not otherwise be in a position to do.

*Id.* at 180 (emphasis added); see also Timerman, *Fear Returns to Argentina*, N.Y. Times, Jan. 5, 1991, at 21, col. 1. Jacobo Timerman had been a torture victim in Argentina and asked his psychiatrist what to do if he found himself face to face with his torturer. He was told to "Look him straight in the face, in silence." When this accidental confrontation occurred in a coffee shop in Buenos Aires, the torturer's response was: "What? Is this Jew still alive?" *Id.*

American Court of Human Rights, another body of the OAS that sits in San Jose, Costa Rica. A decision by the Inter-America Commission is expected in February 1991.

Weschler's book is also full of references to the United States policy towards Brazil and Uruguay in the years in which these abuses were committed. These are references to security assistance programs in the 1960's, designed to strengthen military and police capacity to respond to "internal threats."<sup>47</sup> Those programs not only played a part in encouraging abusive treatment of detainees; they also helped foster an attitude of unaccountability in the part of the recipients of American largesse. United States policy towards Latin America has indeed changed since those years.<sup>48</sup> In the late 1970's, the Carter administration<sup>49</sup>

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47. A MIRACLE, A UNIVERSE, *supra* note 2, at 62 ("The Brasil: Nunca Mais authors hold the United States co-responsible to a significant degree for the doctrine of national security, its imposition on Brazil in the 1964 coup, and the growing use and increasingly effective organization of torture in Brazil thereafter."); *see also id.* at 118-19.

The United States was nowhere near as deeply and directly involved in the final subversion of Uruguay's democracy as it has been in the case of Brasil's or would be, later that same year, in the case of Chile's. Nor did the United States provide the Uruguayan military with massive military assistance following the coup. [They didn't need to, as the military had complete control.] What the U.S. State Department did lavish upon Uruguay all through the early seventies were excuses - public assurances that all the repression going on down there was merely a temporary response to an immediate emergency.

*Id.* at 118-19 (endnote omitted).

48. Shestack, *The Rise and Decline of Human Rights in United States Foreign Policy*, 15 COLUM. HUM. RTS. L. REV. 19 (1983). *See generally* Posner, *The Reagan Administration and Human Rights Policies*, 7 WHITTIER L. REV. 683 (1985); Young, *Human Rights Policies of the Carter and Reagan Administrations: An Overview*, 7 WHITTIER L. REV. 689 (1985); Thyden, *An Inside View of United States Foreign Policy Under the Reagan Administration*, 7 WHITTIER L. REV. 705 (1985).

49. President Carter defined "Human Rights" as: "free speech . . . respect for the individuality of persons . . . the chance to express one's political beliefs . . . freedom to speak and think as one pleases . . . to participate in the determination of [one's] destiny . . . freedom from torture . . . from prolonged imprisonment without charge." DeYoung & Krause, *Our Mixed Signals on Human Rights in Argentina*, The Wash. Post, Oct. 29, 1978, at C1, col. 3.



inaugurated an era of publicly expressed concern for human rights.<sup>50</sup> Though the Reagan administration announced a one hundred and eighty-degree turn, in fact the policies of the 1980's were not a complete return to the years of support for undemocratic armed forces and for their repressive tactics.<sup>51</sup>

In consonance with the trend towards elected government throughout the continent, the Reagan administration embraced the concept of democratic elections as the ultimate guarantee for human rights observance. This policy overlooked the fact that many violations continue to be committed even under freely elected government, and ignored the presence of powerful military elites that are effectively beyond control of democratic governments. But in one respect it produced a highly welcome change: in the 1980's, the United States stood firmly against attempted *coups* against the democratic order, and in favor of transition from authoritarian rule to elected government.<sup>52</sup> This is a significant change from the attitudes of the United States as recently as the 1970's.

There has been, however, no support for efforts to bring past abuses to Justice, and no objection has been registered to attempts to limit prosecutions through amnesties or pardons, even when those decisions were clearly made under threat of military uprisings. When President Menem issued the latest pardons in Argentina, on December 29, 1990, there was some speculation that the United States would at least protest the pardon of General Carlos Guillermo Suarez Mason,<sup>53</sup> who had been

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50. A MIRACLE, A UNIVERSE, *supra* note 2, at 13. On one of President Carter's visits to Brazil, human rights activists gambled that the regime would be reluctant to engage in outright censorship and placed a two page spread in the country's newspapers detailing the military's record of tortures, disappearances, and other human rights violations. One activist stated: "In Brazil, in particular, his [President Carter] Administration's sustained pressure was a major factor in the regime's ongoing liberalization." *Id.* at 13. For a similar example of pressure from the Carter Administration on Uruguayan human rights, see *id.* at 149.

51. For an analysis of specific political changes, as opposed to policy results, that took place during the Reagan years, see generally Broder and Lambek, *supra* note 2.

52. For an example of this, see . . . *And Curious Signals at Home*, The Los Angeles Daily Journal, July 17, 1986 at 4, col. 1 (from the Washington Post - Editorial) ("The Reagan administration, recognizing that the stability of Chile hinges on its expeditious return to its democratic roots . . . has publicly called on the Pinochet regime to identify and prosecute those responsible for the bloodshed . . .").

53. General Suárez Mason led the 1st Army Corps in Buenos Aires where many of the "Dirty War" crimes occurred. Ehrmann, *Carlos Menem Blinks*, The Christian Science Monitor, Jan. 11, 1991, (Opinion) at 18, col. 1. Suárez Mason was accused of 43 murders and 24 kidnappings in which the victims disappeared. Timerman, *Fear*

extradited from the United States to face charges for his role in the "dirty war," after considerable effort by American judges and prosecutors over an 18-month period.<sup>54</sup> When Argentine journalists inquired about American reaction, the State Department issued a terse "no comment."<sup>55</sup> The State Department also had no comment when Guatemalan dictator General Oscar Mejía Víctores passed a self-amnesty law only four days before yielding power to President Vinicio Cerezo, in January 1986, and again no comment when Cerezo, a few weeks later, blocked attempts in the Guatemalan Congress to repeal that law.<sup>56</sup>

Objections by the United States to amnesties and pardons might not have changed the course of impunity, but they would have added considerable support to the efforts of human rights monitors to ensure accountability for past crimes. More important than those objections, however, would have been some form of encouragement to early efforts to restore Truth and Justice. No support was ever expressed for President Raúl Alfonsín's decisions, in December 1983, to create a National Commission on Disappeared Persons and to prosecute the leaders of the military dictatorship for their responsibility for the "dirty war." Official United States policy in those days was silence, though in private diplomats expressed their reservations about a policy that might induce the military in Uruguay and Chile never to give up power to civilians. Needless to say, those dire predictions did not materialize.

When democracy was threatened by the first of four military uprisings in Argentina, in Easter 1987, President Ronald Reagan issued

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*Returns to Argentina*, N.Y. Times, Jan. 5, 1991, at 21, col. 1.

54. Ehrmann, *Carlos Menem Blinks*, The Christian Science Monitor, Jan. 11, 1991, (Opinion) at 18, col. 1 ("Millions of United States taxpayer dollars were spent to extradite him to Argentina to stand trial on 39 counts of murder, torture, and kidnapping: Menem's pardon makes it all for naught.").

55. *El Departamento de Estado omitió comentar el perdón*, LA NACIÓN, Jan. 2, 1991, at 4, col. 1 (Daily Argentine Newspaper).

56. Broder & Lambek, *supra* note 23.

Under the decree issued by General Mejía Víctores four days before Cerezo took office, the president was forbidden to prosecute military or police personnel for political crimes committed in the four years preceding that date. Although Cerezo initially stated that an amnesty would be a matter for the courts, on January 24, 1986, Cerezo announced that the amnesty would be respected.

*Id.* at 137-38 (footnotes omitted).

two strong statements in favor of democracy, which were universally considered helpful. Neither of them, however, made any reference to the rebels' main demand for a stop to prosecutions. A few weeks later, when Alfonsín yielded to those pressures and forced through the "due obedience" law, the Reagan administration remained silent, ostensibly because the issue is considered an "internal matter." The latter argument does not carry a lot of weight in Latin America, since there are so many "internal matters" in which the United States does take public positions. Instead, Latin Americans connect United States silence with criticism of the Carter human rights policies from the Republican camp, with early Reagan administration pronouncements that attempted to whitewash the crimes of all military dictators in the region, and with the longstanding American policy of maintaining good working relations between the Pentagon and all Latin American military establishments.<sup>57</sup>

Senators, House Representatives, and most of the United States media have frequently expressed support for efforts at accountability, and dismay at the all-too-frequent setbacks that such policies have suffered. But official United States policy has stubbornly remained silent, while other initiatives which may well be completely unrelated reinforce the sense by many Latin Americans that the United States does not care about Truth and Justice, or worse, that it would prefer the relationship between civilians and military to go back to business as usual. Weschler refers to the appointment of Richard Melton,<sup>58</sup> who had held a consular post in Brazil during the darkest years of the 1960s, as Ambassador to Brazil. A torture victim claimed to have been interrogated by Melton in between torture sessions, and his complaint received considerable attention in Brazilian press. Whether or not the claim was true, it was prominently noticed in Brazil that the United States Senate ratified Melton's appointment without even asking a question about this episode. Terence Todman is the present Ambassador to Buenos Aires; during the Carter years he was Assistant Secretary of State for Inter-American Affairs, until his opposition to the human rights policies forced his replacement. In

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57. Juan de Onís, *Reagan's State Department Latin Team Asks Curbs on "Social Reformers"* N.Y. Times, Dec. 4, 1980, § A, at 1, col. 3. A report to President Reagan is quoted as saying: "Internal policy-making procedures should be structured to insure that the human rights area is not in a position to paralyze or unduly delay decisions on issues where *human rights concerns conflict with other U.S. interests.*" *Id.* at A17, col. 1 (emphasis added).

58. Richard Melton was also the former Director of the Office of Central American and Panamanian Affairs of the State Department. Broder & Lambek, *supra* note 23, at 131.

fact, it is well remembered in Argentina (though not in the United States) that his replacement came mostly as a result of a public statement he made during a visit to Argentina, to the effect that human rights violations would not be an impediment to normal relations between the U.S. and the Argentina of the dictators.

This state of affairs has not changed in most recent times, even though the recurring theme of accountability and impunity should move the State Department to reassess its position. On the eve of President Bush's visit to Chile, in December 1990, the administration lifted all restrictions on military aid, even though there has been no significant progress in bringing to justice those responsible for the murder of exiled leader Orlando Letelier, murdered by the Pinochet regime in September 1986, in the streets of Washington, D.C. Jorge Serrano Elías, the newly elected President of Guatemala, has announced yet another sweeping self-amnesty law for the military, again under the guise of a peace offering to the guerrillas, and the State Department will not object (in fact, it appears that the Embassy in Guatemala City is privately expressing support for the idea). The Bush administration, however, deserves praise for its very public and timely support for the Reverend Jean-Bertrand Aristide, who swept the Haitian elections in December 1990,<sup>59</sup> but it has yet to express support for one of Aristide's most popular promises: to bring the crimes of the recent past to Justice.<sup>60</sup>

Torture is a social ill that *can* be abolished through a concerted, sustained international effort, just like slavery was finally abolished in the last century, after the conscience of mankind had rejected it for many generations. Of all types of human rights violations, torture is perhaps to most overwhelmingly condemned and outlawed.<sup>61</sup> In addition to

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59. The United States is sending \$82 million dollars in aid to ease Haiti's transition to multiparty government. Wilson, *Will Aid Reap Bitter Fruit?*, The Wash. Times, Feb. 18, 1991 (Commentary), at G3.

60. In a partial but encouraging reversal of the trend criticized here, we note that, at least on two occasions in 1990, Alvin Adams, United States Ambassador to Haiti, deplored human rights violations and called on the authorities to bring the culprits to justice. HUMAN RIGHTS WATCH WORLD REPORT 1990: AN ANNUAL REVIEW OF DEVELOPMENTS AND THE BUSH ADMINISTRATION'S POLICY ON HUMAN RIGHTS WORLDWIDE 202-08 (1991). Though these statements referred to current, not past abuses, they are a welcome stand.

61. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on December 9, 1975. G.A. Res. 3452, 30 U.N. GAOR Supp. (No.34) at 531, U.N. Doc. A/10034 (1975). See also E. PETERS, *supra* note 17, at 142.

prohibitions in domestic legislation, there has been considerable development of international law standards, and it has been comparatively easy to reach agreement on those instruments when it comes to torture. The United States, which generally lags far behind in subscribing to and ratifying international law instruments, did contribute greatly to this effort in 1990, when the Senate ratified the United Nations Convention against Torture.<sup>62</sup>

Abolition in practice, however, will take a systematic campaign by governments, by multilateral organizations and by non-governmental groups both at the international and at the domestic level. It will happen when there is enough generalized public revulsion at the practice, and when it becomes apparent to all that the law that prohibits torture is effectively implemented. We need to punish torture, not only to prevent its recurrence, but out of respect for the victim, and — more importantly — out of respect for the norm itself: we punish torturers because we hold the law that prohibits it in such high regard that we do not tolerate transgressions. And we need to punish only after all efforts have been made to investigate each act of torture and the findings of those investigations are disclosed to the general public.

In the daunting task of abolishing torture, *A Miracle, A Universe* has already become a significant contribution. Among the steadily growing bibliography on Truth and Justice, this book stands out because of its focus on the efforts of courageous victims, of their families, of human rights monitors and of the organizations of civil society that have been put together for this purpose under perilous circumstances. Those efforts are the continent's brightest hope for democracy, and in Lawrence Weschler they have found a powerful, witty and moving voice. The process of Truth and Justice continues to unfold, and one hopes that Mr. Weschler will once again visit the issue soon.

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62. Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, adopted by unanimous agreement of the U.N. General Assembly on December 10, 1984 and entered into force on June, 26, 1987. G.A. Res. 39/46, 39 U.N. GAOR Supp. (No.3), U.N. Doc. A/39/708 (1984).